DOCKET FILE COPY ORIGINAL

RECEIVED

APR 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-92
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

To: The Commission

COMMENTS OF ARCH WIRELESS, INC.

Dennis M. Doyle
Vice President, Telecommunications
ARCH WIRELESS, INC.
1800 West Park Drive
Westborough, MA 01581-3912
(508) 870-6612

April 5, 2002

SUMMARY

Since the passage of the 1996 Telecommunications Act, many new technologies have emerged on the communications landscape, requiring a reevaluation of the Commission's unbundling rules. In the *Local Competition* ***Order,*** the Commission properly foresaw the need for such an undertaking by setting forth a plan to review the incumbents' unbundling requirements every three years. Now, six years later, the Commission properly questions how new technologies tit within the previously developed regulatory framework.

As competitive telecommunications companies struggle in a difficult economy, the Commission's role is clear: to encourage the rapid deployment of new technologies through a realistic interpretation of the Act's unbundling requirements. The public interest supports the widespread deployment of alternative technologies such as those provided by CMRS carriers, serving rural as well as metropolitan areas.

Recognizing that CMRS providers are "requesting telecommunications carriers," entitled to obtain unbundled network elements, the Commission's determination that carriers are "impaired" without access to dedicated transport should be applied to all carriers, including CMRS carriers. Most importantly, the Commission should forbid ILECs from making discriminatory distinctions between wireless and wireline carriers in order to avoid unbundling obligations. At this stage of the development of competition, the ILECs' ubiquitous networks remain the only option for the transport of paging traffic in most instances. Accordingly, a realistic reading of the purposes for which "dedicated transport" may be ordered requires the inclusion of functionally equivalent wireless facilities, including paging facilities.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Section 25 1 Unbundling Obligations of Incumbent Local Exchange Camers	)	CC Docket No. 01-92
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1997	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

To: The Commission

COMMENTS OF ARCH WIRELESS, INC.

Arch Wireless, Inc. ("Arch"), a national provider of paging and messaging services, hereby submits comments in the above-captioned proceeding. Arch supports the Commission's efforts in this proceeding to clarify the unbundling requirements of Section 251(c)(3) of the Telecommunications Act of 1996.[1] It is entirely appropriate for the Commission to consider, at this stage in the development of competition, the appropriateness of its unbundling rules for carriers using alternative technologies, such as CMRS carriers.[2] Accordingly, the Commission's unbundling rules should unambiguously require incumbent local exchange carriers ("ILECs") to

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("1996 Act" or "Act").

[2] ***See*** *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338, *Notice of Proposed Rulemaking,* 16 FCC Rcd. 22781, 22783 (Dec. 20, 2001) *("Triennial* ***Review*** *NPRM").*

provide dedicated transport as an unbundled network element ("UNE") to all telecommunications carriers, including paging carriers.

In particular, the Commission should prohibit the ILECs from denying dedicated transport to telecommunications camers that use those elements to interconnect facilities equivalent to switches or wire centers, construed with an eye to the way the service is actually provided. Arch urges the Commission *to* use this proceeding to reaffirm technology-neutral, nondiscriminatory unbundling requirements, in order to foster competition in the commercial mobile radio service ("CMRS") markets.

I. INTRODUCTION AND BACKGROUND

Paging providers such as Arch have had a long and troubled history with the ILECs. Prior to the Act, paging carriers were deemed "end users," and were subject to inequitable compensation schemes that failed to recognize CMRS carriers' co-carrier status, including charges for receipt of traffic, obtaining telephone numbers, and interconnection. Even after the Commission definitively prohibited the ILECs from imposing these charges, the ILECs failed to comply.[3] In addition, CMRS carriers, including paging camers, are subject to the array of obligations of a telecommunications carrier.[4] Accordingly, paging providers must also receive the full pro-competitive benefits of the Act.

---

[3] TSR Wireless, LLC **v.** U.S. West Comm., Inc., FCC 00-194, Memorandum Opinion and Order, 15 FCC Rcd. 11166, 11167-11169 (rel. June 21,2000) ("TSR Wireless"). See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (1996) ("Local Competition Order"), Separate Statement of Commission Rachelle B. Chong, (recognizing that "CMRS providers have suffered past discrimination at the hand of the LECs[.]").

[4] For example, Arch pays into the Universal Service Fund, the Telecommunications Relay Services Fund, the North American Numbering Plan Administration Fund, and the Local Number Portability Fund.

Today, the paging industry fights to maintain its niche in the CMRS market, and has emerged as a reliable, low-cost alternative. The Commission's enforcement of the Acts interconnection requirements has leveled the playing field somewhat for CMRS carriers. But paging providers continue to be affected by the ILECs' unwillingness to recognize their right to unbundled network elements. Now, more than ever, the paging industry needs unfettered access to the ILECs' networks, not continued impediments to growth.

Despite statutory obligations and Commission precedent, the ILECs still require paging carriers to order dedicated transport out ofprivate line or special access tariffs. The result is that paging carriers, such as Arch, are paying much higher rates for the same transmission facilities offered to CLECs at UNE rates. Accordingly, Arch supports the AT&T Wireless and VoiceStream Petition for Declaratory Ruling, and requests that the Commission affirm that CMRS providers may convert private line or special access facilities purchased from the ILECs tariff into unbundled dedicated transport.'

Arch orders predominately DS1s from incumbent carriers nationwide to interconnect its paging terminals and/or its transmitter sites. Arch receives traffic from the ILECs at Arch's paging terminal, which is transferred to its transmitters, and then directed to the end user's paging device. Despite having requested to purchase these facilities from ILECs as UNEs, Arch has been required to order from the ILEC's special access or private line tariff. The ILECs further charge full tariff rates for termination at each intermediate point and multiplexing of lines. The overall rates are staggering.

---

5 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Petition for Declaratory Ruling, CC Docket No. 96-98 (Nov. 19, 2001) ("ATTW/VoiceStream Petition"); Triennial Review NPRM, 16 FCC Rcd. at 22788.

Unfortunately, there are no viable alternatives for Arch to the incumbents' network. As the Commission has repeatedly recognized,, without real alternatives competitive carriers are severely impaired in their ability to provide service. While the ILECs argue that there are other suppliers in the market, the presence of other suppliers is inconsistent and their services inadequate for Arch's purposes. Thus, requesting carriers remain highly dependant on the ILECs network

II. PAGING PROVIDERS ARE TELECOMMUNICATIONS CARRIERS ENTITLED TO UNES

As requesting telecommunications carriers, there can be no doubt that CMRS providers are entitled to unbundled access to all UNEs, including dedicated transport. Section 251(c)(3) of the Act requires incumbent LECs to provide nondiscriminatory access to UNEs to ***"any requesting telecommunications carrier*** for the provision of a telecommunications service."[6] The Act further defines a telecommunications carrier as a provider of telecommunications services, wherein telecommunications services are the offering of telecommunications for a fee directly to the public.' As providers of telecommunications services, paging carriers fall within this definition.[8] Further, in the *Local Competition* ***Order,*** the Commission recognized that CMRS carriers provide telecommunications services.[9] Accordingly, all CMRS providers, including paging carriers such as Arch, are telecommunications carriers entitled to access to UNEs.

---

6 47 U.S.C. § 251(c)(3) *(emphasis added).*

7 47 U.S.C. §§ 153(44),153(46).

8 *Local Competition* Order, 11 FCC Rcd. at 15997.

9 *Zd.* Indeed, even Verizon does not dispute that CMRS providers are "requesting telecommunications carriers." Ex Parte Letter from W. Scott Randolph, Director of Regulatory Affairs, Verizon, to Margalie Roman Salas, FCC Secretary, CC Docket No. 96-98 (filed August 22,2001) ("Verizon **Ex** Parte").

III. A SEPARATE SERVICE-SPECIFIC UNBUNDLING REQUIREMENT IS NOT REQUIRED

Section 251(d)(2) of the Act requires the Commission to apply the "necessary" and "impair" standards to determine which elements must be unbundled by the incumbents." In accord with the statute, the Commission's rulings do not limit the availability of dedicated transport to any particular class of carrier.

In the *Local Contpetition Order,* the Commission applied the "impair" standard to conclude that "incumbent LECs must provide interoffice transmission facilities [including dedicated transport] on an unbundled basis to requesting carriers."" In fact, the Commission rejected placing limitations upon carriers requesting UNEs, noting that "[t]he language of section 251(c)(3) is cast exclusively in terms of obligations imposed on incumbent LECs, and it does not discuss, reference, or suggest a limitation or requirement in connection with the right of new entrants to obtain access to unbundled elements."[12]

Subsequent to the release of the *Local Competition Order,* the Supreme Court addressed the Commission's unbundling analysis in *AT&T v. Iowa Utilities Board* and required the consideration of alternative non-ILEC sources in determining whether an element meets the

---

10 47 U.S.C. § 251(d)(2). "In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether **(A)** access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. $251(d)(2).

11 *Local* Competition *Order,* 11 FCC Rcd. at 15717. The Commission noted that dedicated transport is not proprietary, and therefore does not warrant the "necessary" analysis. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* 15 FCC Rcd. 3696, 3846 (1999) *("UNE Remand Order").*

12 *Local Competition Order,* 11 FCC Rcd. at 15666.

''necessary" and "impair" standard of Section 251(d)(2).[13] On remand, the Commission applied a more stringent "impair" analysis in the *UNE Remand Order* and reaffirmed that, as a practical, economic and operational matter, "requesting carriers are impaired without access to unbundled dedicated and shared transport network elements."[14]

The Commission now asks whether it should apply the unbundling analysis to specific services and/or whether "to broaden the inquiry to include a geographic component."[15] To conclude that a separate "impair" analysis is required for different services has no basis in the statute and would lead to absurd results.

Section 251(d)(2) recognizes that any "impair" analysis must consider the ability of the requesting carrier to provide the services "it seeks to offer," instead of looking at merely financial, operational or any other single factor that is impaired. Section 251(c)(3) does not specify, however, what services may he provided by the "requesting telecommunications carrier."[16] Further, Section 251(d)(2) does not require the Commission to undertake a separate service-specific unbundling analysis."

Applying a separate unbundling analysis to every service or every geographic area will create unreasonable burdens on the Commission and competitors, and could harm the advance of

---

[13] *AT&T v. Iowa Utils. Bd.,* 525 U.S. 366 (1999).

[14] *UNE Remand Order,* 15 FCC Rcd. at 3842

[15] *Triennial Review NPRM,* 16 FCC Rcd. at 22799.

[16] 47 U.S.C. § 251(c)(3).

[17] 47 U.S.C. § 251(d)(2).

technology. The reality is that there are presently eight designated UNEs,[18] and unknown numbers of possible "services" that could be analyzed. Should the Commission decide to apply the unbundling analysis to each service for every UNE, the result would be an extremely burdensome case-by-case analysis. The incumbents would undoubtedly take advantage of this enormous regulatory undertaking to further delay the provisioning of UNEs.

In fact, the two narrow instances in which the Commission has begun to consider whether to use a service-specific unbundling analysis highlight the problems with such an undertaking. In the ***Triennial*** *Review NPRM*, the Commission cites to a Public Notice released following its decision in the *Supplemental Order Clarification* soliciting comment on whether UNEs should be unbundled on a service-specific basis." In the *Supplemental Order Clarification*, the Commission was confronted with a unique set of facts regarding the rules prohibiting ILECs from separating combined loop and transport elements, which required the unbundling of enhanced extended links ("EELs"). This created a potential conflict with interexchange carriers' universal service obligations.[20] Arch does not, however, convert EELs for use in special access services.

The issue of service-specific unbundling was raised again in the Joint Petition of BellSouth Corporation, SBC Communications, and Verizon Telephone Company for the elimination of mandatory unbundling of high-capacity loops and dedicated transport, which

---

[18] 47 C.F.R. §51.319. The rules currently provide the following list of UNEs: local loop and subloop, network interface devices, switching capabilities, interoffice transport facilities, signaling networks and call-related databases, operator services and directory assistance, operation support systems, and the high frequency portion of the loop. 47 C.F.R. §51.319.

[19] *Triennial Review NPRM*, 16 FCC Rcd. at 22798

addressed whether CLECs are impaired in their ability to obtain dedicated transport.[21] In the *BOC Joint Petition,* the Commission was asked to determine that CLECs are not impaired, as they may either self-provision or access alternative fiber transport in the top metropolitan service areas ("MSA").[22] Unlike CLECs, who are focusing on providing high-capacity bandwidth to end-users in urban business centers, CMRS providers seek dedicated transport in metropolitan, suburban, and rural areas, and are therefore not included in this narrow analysis. Indeed, in both the *Supplemental Order Clarification* and the *BOC Joint Petition,* the facts are so limited, and the question of impairment so specific, that those cases should not be viewed as illustrative of a global need for a service-specific unbundling analysis

The Commission properly recognizes the possibility that such a service-specific analysis could "stifle innovation and creativity as carriers decline to expand the services they offer for fear of losing access to UNEs."[23] The Commission further notes that "a service- or location specific analysis will be administratively more difficult" and that "the resulting rules could be more administratively burdensome on carriers because it would be more difficult to keep track of where and under what circumstances certain elements must be unbundled."[24] This outcome would be decidedly counter to the Commission's past actions. In the *UNE Remand Order,* the

---

[20] *In the Matter of Implementation of the Local Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *Supplemental Order Clarification,* 15 FCC Rcd. 9587,9588 (2000) *("Supplemental Order Clarification").*

[21] *Joint Petition of BellSouth, SBC and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport,* CC Docket No. 96-98 (filed April 5,2001) *("BOC Joint Petition").*

[22] *BOC Joint Petition,* at 19. The *BOC Joint Petition* points to the presence of collocating CLECs in the central offices of 183 of the 320 MSAs serviced by the BOCs. *BOC Joint Petition,* at 19.

[23] *Triennial Review NPRM.* 16 FCC Rcd. at 22799.

Commission noted its intention to ''ensure that the definition of interoffice transmission will apply to new, as well as current technologies."[25] This goal is no less valid today. Rather, the Commission's priority at this stage of the Local Competition Proceeding should be to ensure that its unbundling rules foster the innovative provision of an evolving array of services using an ever-advancing combination of technologies.

IV. EVEN UNDER A SERVICE-SPECIFIC INQUIRY, PAGING CARRIERS SHOULD RECEIVE DEDICATED TRANSPORT

A. Paging Carriers Are Impaired Without Access to Dedicated Transport

Even if the Commission does conclude that UNEs should be unbundled only on a service-specific basis, the Commission nevertheless must find that paging carriers are impaired in the provision of paging services without access to dedicated transport. The ***UNE Remand Order*** interpreted the "impair" standard to require the Commission to consider whether, "taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer."[26]

Paging providers have few – and in many cases, no – alternatives to purchasing interoffice transport out of the ILECs' tariffs. At present, it would be economically prohibitive for Arch to recreate the ILECs network for the provision of paging services, and the Commission

---

[24] ***Triennial Review NPRM***, 16 FCC Rcd. at 22800

[25] ***UNE Remand Order.*** 15 FCC Rcd. at 3843.

[26] ***UNE Remand Order,*** 15 FCC Rcd. at 3125.

has recognized that this should not be required.[27] The ILECs argue that there are alternative providers of transport from which carriers may choose.[28] While there are a very small number of non-ILEC providers of transmission circuits, particularly in the business districts of major cities, the existence of these providers is spotty and does not cover the territory required for Arch to offer paging services throughout its coverage area.

In addition, alternative transport providers do not offer ubiquitous service to permit Arch to enter into region-wide contracts. The Commission has recognized that this "patchwork of alternative network facilities" is insufficient to create a viable alternative to the incumbent's network.''

Thus, in many instances, Arch's only alternative is to order the transmission facilities it needs off of the ILEC tariff. The Commission has concluded that ordering from the ILECs' tariffs is not an alternative to dedicated transport for purposes of the impair analysis, and with good reason.[30] If it were, the ILECs could avoid all unbundling obligations by offering UNE

---

27 The Commission recognizes that self-provisioning is "not sufficiently available as a practical, economic and operational matter[.]" *UNE Remand Order*, 15 FCC Rcd. at 3842.

28 Verizon Ex Parte; Ex Parte Letter from Jay Bennett, Executive Director of Regulatory Affairs, SBC Telecommunications Inc., to Margalie Roman Salas, FCC Secretary, CC Docket No. 96-98 (filed July 10,2001) ("SBC Ex Parte").

29 *UNE Remand Order*, 15 FCC Rcd. at 3849. The Commission "reject[ed] any bright-line test that triggers elimination of an incumbent LECs unbundling obligation based on the presence of a single competitor that has self-provisioned transport in a particular market." *UNE Remand Order*, 15 FCC Rcd. at 3851.

30 *UNE Remand Order*, 15 FCC Rcd. at 3855; *See also Local Cowpetition Order*, 11 FCC Rcd. at 15644.

services under tariff." Indeed, if there were real alternatives, paging providers would not choose to purchase transport at full tariff rates as they do now.

The ILECs have argued that the transmission facilities that CMRS carriers use should not be unbundled because they are constructed specifically for CMRS carriers' use.[32] The Commission has recognized, however, the ILECs' obligation to modify their networks to comply with their unbundling obligations.[33] Arch urges the Commission to recognize that dedicated transport is not built at the CMRS provider's request, and forbid the ILECs from using disingenuous claims of new construction to reject UNE orders.[34]

B. The Facilities Paging Carriers Request Are Unbundled Transport

In the *Triennial Review NPRM,* the Commission asks parties to comment on "whether the facilities requested by CMRS carriers fit within our current definition of unbundled transport."[35] Based on both Commission precedent and the spirit of the Act, the Commission should recognize that the transmission facilities used by paging carriers qualify as "dedicated transport."

The Commission's rules define "dedicated transport" as:

---

31 *UNE Remand Order,* 15 FCC Rcd. at 3855. The Commission held: "if we were to adopt the incumbents' approach, the incumbents could effectively avoid all of the 1996 Act's unbundling and pricing requirements by offering tariffed services that, according to the incumbents, would qualify as alternatives to unbundled network elements."

32 Ex Parte Letter from John W. Kure, Executive Director of Federal Policy and Law, Qwest, to Margalie Roman Salas, FCC Secretary, CC Docket No. 96-98 (filed September 26,2001) ("Qwest Ex Parte") at 1.

33 *Triennial Review NPRM,* 16 FCC Rcd. at 22811; *Local Competition Order,* 11 FCC Rcd. at 15602, 15605; *UNE Remand Order,* 15 FCC Rcd. at 3775.

34 Incredibly, Qwest suggests that it constructs all high capacity circuits at the request of CMRS providers. Qwest Ex Parte at 1.

> incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OC3 levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.[36]

In the *TSR Wireless Order*, the Commission determined that paging terminals "perform functions equivalent to end office switching."[37] The Commission previously ordered that "incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers."[38] Thus, the Commission's determination that the paging terminal is a switching facility clearly entitles paging carriers to access dedicated transport for the links between ILEC switching facilities and paging terminals.

Paging carriers such as Arch in some cases have been required to pay for transmission links to deliver LEC traffic from the LEC switch to the paging terminal. For transit traffic, the Commission has held that this is permissible.[39] ILECs have also used their market power in interconnection negotiations, however, to require paging carriers to pay "full freight" for transmission facilities to deliver the providing ILEC's *own* traffic when the distances involved

---

35 *Triennial Review NPRM,* 16 FCC Rcd. at 22809. It is Arch's experience that special construction is rarely required for the transport links that it orders.

36 47 C.F.R. § 51.319(d)(1)(i).

37 *TSR Wireless Order,* 15 FCC Rcd. at 11179. In the *TSR Wireless Order,* the Commission further concluded that CMRS carriers that employ Mobile Transport and Switching Offices also perform functions equivalent to end office switching.

38 *Local Cornpetition Order,* 11 FCC Rcd. at 15718.

39 *TSR Wireless Order,* 15 FCC Rcd. at 11166. *See also Local Cornpetition Order,* 11 FCC Rcd. at 16016. Given the Commission's general calling-party's-network-pays (CPNP) system, Arch does not believe that the holding in *TSR Wireless* was correct, because it requires paging carriers to pay for the receipt of traffic.

extend beyond a certain mileage. This situation arises most often with "Type-1" end-office interconnection, where the distance from the end office to the paging switch may be large. This situation is not, however, of paging carriers' making. Prior to the passage of the 1996 Act, paging carriers had no other way of receiving telephone numbers except Type-1 end-office interconnection. Many of these numbers were assigned before the existence of the neutral numbering administrator and remain assigned today.[40] In essence, paging carriers were forced to interconnect at the remote end office, and the ILECs exploit this situation to require paging carriers to pay full tariff rates to transport traffic out of the ILEC local calling areas. Even in Type-2 tandem interconnection situations, paging carriers are generally required to pay tariff rates for facilities to deliver transit traffic to the paging terminal and for the full cost of the transport if the distance between the ILEC tandem and the paging switch exceeds a certain mileage.

Thus, paging carriers currently are being forced to pay full tariff rates to transport the LECs' own traffic beyond a certain mileage, and transit traffic in all cases, from the ILECs' tandem or end-office to the paging terminal. In these situations, paging carriers should be able to purchase these transmission links as UNEs rather than out of the ILECs' tariffs. As noted above, these links interconnect switches or wire centers owned by the ILECs and switches owned by the paging carrier. Thus, they fall squarely within the current definition of dedicated transport.

---

[40] Even after paging carriers could get numbers directly from the numbering administrator and request Type-2 tandem interconnection, paging carriers sometimes requested Type-1 interconnection because it allowed them to acquire numbers in blocks smaller than 10,000. This is a more economical use of numbers and should not be discouraged.

ILECs also should be required to provide, on a UNE basis, the transmission links between paging terminals and paging base stations or transmitters. The ILECs argue that CMRS providers' base stations do not perform the required switching functionality to meet the definition of dedicated transport.[41] Verizon further proposes that rule 51.319(d)(1)(i) requires that *both* the CMRS provider's facilities – namely the wireless provider's mobile switching center ("MSC") and base station – must be switches or wire centers in order for the requesting carrier to obtain dedicated transport.[42] Paging transmitters are instrumental in supporting switching functionality, and therefore should be determined to be functionally equivalent to a "switch" for purposes of ordering dedicated transport as a UNE. The Commission should recognize that while new technologies may not perform in the same manner as their wireline counterparts, if the resulting functionality is the same, they should be treated accordingly. The rule therefore provides for transport of telecommunications between the ILEC end office and requesting carrier's "wire centers" ***or*** "switches."[43] There is no support for Verizon's limited reading of the rule to require switching functionality at both CMRS providers' facilities.

The Act's nondiscriminatory principles require a finding that there is no functional distinction between wireline carriers' switching stations and wireless carriers' switching stations.[44] The differences between wireless and wireline facilities are insignificant, and the incumbents should be prohibited from continuing to engage in discriminatory practices.

---

41 Verizon EX Parte at 2; SBC EX Parte at 1.

42 Verizon EX Parte, at 1-2

43 47 C.F.R. § 51.319(d)(1)(i).

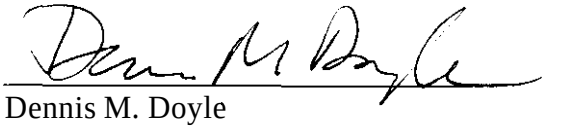
44 47 U.S.C. § 251(c)(3): The ILEC's have a duty to provide "nondiscriminatory access" to unbundled network elements at "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. 251 (c)(3).

CONCLUSION

As a matter of public policy, the Commission should recognize that the Act intends a broad construction of the ILECs' unbundling requirements in light of current market conditions. Accordingly, the Commission should clarify definitively that CMRS providers are entitled to purchase dedicated transport as a UNE. This conclusion is firmly based in the rules and prior Commission precedent

At the very least, the Commission should clarify that the transport segment from the ILEC end office to the paging providers' paging terminal is dedicated transport. The ILECs provide *no* plausible reason why they should be permitted to deny this request. At a minimum, paging providers should be able to order this transmission segment as a UNE, as the request falls squarely within the current definition of dedicated transport in the rules

Respectfully submitted,

By: 

Dennis M. Doyle
Vice President, Telecommunications
ARCH WIRELESS, INC.
1800 West Park Drive
Westborough, MA 01581-3912
(508) 870-6612

April 5,2002